

**THE 2022 PHILIP C. JESSUP INTERNATIONAL LAW
MOOT COURT COMPETITION**

THE CASE CONCERNING THE SUTHAN REFERENDUM



DEMOCRATIC REPUBLIC OF ANTARA

APPLICANT

V.

THE VELAN KINGDOM OF RAVARIA

RESPONDENT

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF JURISDICTION

The Democratic Republic of Antara (“Antara”) and the Velan Kingdom of Ravaria (“Ravaria”) hereby submit the present dispute to the International Court of Justice (“ICJ”) pursuant to Article 40(1) of the Court’s Statute, in accordance with the Special Agreement for submission to the ICJ of the differences concerning the Suthan Referendum, signed in The Hague, The Netherlands, on the thirteenth day of September in the year two thousand and twenty-one. Pursuant to article 36(1) of the Statute, the Court has jurisdiction to decide all matters referred to it for decision. Both parties accept the Court’s decision as final and binding and will execute it in good faith in its entirety.

PLEADINGS ON BEHALF OF THE RESPONDENT

QUESTIONS PRESENTED

The Velan Kingdom of Ravaria respectfully requests the Court to adjudge:

I.

Whether the documents obtained in the illegal search of the briefcase found in the vehicle driven by Ms. Walters and the 30 May 2021 recording of the conciliation meeting are admissible as evidence in these proceedings;

II.

Whether the alleged financial contributions of Ravaria and cyber-operations in connection with the Suthan referendum were consistent with international law;

III.

Whether Antara's order suspending Prof. Hunland's Pano account was in violation of international law; and whether Antara must therefore rescind the order; and

IV.

Whether Antara's interference with computers and devices operating on Ravarian soil, resulting from the decision to take down the lunar botnet, was in violation of international law.

PLEADINGS ON BEHALF OF THE RESPONDENT

STATEMENT OF FACTS

BACKGROUND

The Velan Kingdom of Ravaria is a developed country, sharing the border with the Democratic Republic of Antara. Both countries are located in the Benthamian Peninsula.

In the 18th century, the Benthamian Peninsula was colonised under the power of the Zemin Empire, and separated into 3 districts, Antara to the North, Ravaria to the South, and Sutha in between. Sutha was neither highly populated nor developed, but in the late 1920s its population grew exponentially due to the discovery of large resources' deposits there. Ravaria and Antara sought their independence from the Zemin Empire, collapsed in 1949, and became independent states. Sutha's status remained unclear: Antara proposed incorporation of Sutha into its territory, while Ravaria believed it should be granted independence. Since no agreement on the status of Sutha was found, it remained under Zemin rule until 1962.

VELA

Since the early Middle Ages, Vela has been the prevalent religion in the southern part of the Benthamian Peninsula, including present-day Ravaria. Vela, is a monotheistic religion, venerating its canonical texts creators in temples across the region, one of which, the Kuvil Shrine, is situated in Sutha. Each sacred temple is a pilgrimage destination of Velan practitioners. The religion is widely practiced in Ravaria (by 85% of the population) and Sutha (by 47% of the population). Vela officially became the state religion in Ravaria in 1957.

THE TREATY OF SINGAPORE

In 1959, as the dispute on the status of Sutha remained unresolved, Antara and Ravaria approached the UN Secretary-General seeking assistance. Following this, Zemin, Anantara and Ravaria signed a Treaty of Singapore, establishing that Sutha shall become a province of Antara for a period of 25 years, following which the Suthans would have an opportunity to hold a referendum to determine whether they wish to remain a part of Antara or become an independent State.

Nevertheless, many Suthans were not satisfied with the solution offered, as they supported immediate and complete independence.

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ARTICLE 119 OF THE ANTARAN CONSTITUTION

As required by the Treaty of Singapore, Antara incorporated in its Constitution Article 119, providing the right to a referendum to the Suthan people, and committing to respect and implement its result. If the majority of the Suthan residents voted in favour of independence, a two-year transition period, ensuring smooth transition, would commence.

THE SOCIAL MEDIA PLATFORM PANO

Pano is a social media platform, owned by Panoptest Corporation, a public company originating from Zemin. Pano is the most popular platform in the Peninsula, having about twelve million daily active users, including four million users in Antara.

PROFESSOR HUNLAND

Prof. Hunland is a citizen of Ravaria, permanently residing in Antara since the 1980s. A tenured professor of Velan Theology at the University of Sutha, Prof. Hunland is a well-known personality with over nine million followers on Pano.

He is an advocate for Suthan independence and is affiliated with the Suthan Independence Party (SIP), created 1963. Additionally, he established a Sutha-based non-profit foundation called Suthans Against Domination (SAD), which is dedicated to “the promotion of Velan culture and Suthan autonomy.”

Prof. Hunland has been actively engaged in the promotion of this cause, including through his Pano account. He was posting messages supporting Sutha’s independence, as well as criticising Antara’s actions oriented towards dismantling and discrediting it. Since his posts caused controversies, several users of the platform reported his account. Pano refused to take it down emphasizing that “it may be in the public interest for the post to remain available.” However, on 5 February 2021, Antaran Data Protection and Cybersecurity Agency (DPCA) filed an application for the takedown of Prof. Hunlands Pano account. Pano removed his account in accordance with the order, banning Prof. Hunland from the platform, without prior notice. On 20 February 2021, Prof. Hunland delivered a statement accusing Antara of violating his right to freedom of expression. The Ravarian Minister of External Affairs criticised Antara's behaviour as “unworthy of democracy.”

THE SUTHAN REFERENDUM

In September 2020, SIP introduced the proposition for a referendum on Suthan independence in compliance with the rules established by the Treaty of Singapore and under Article 119 of

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Antara's Constitution. The referendum proposal was approved by the majority vote in the Suthan Legislative Council and Antaran Parliament.

On 1 March 2021, the referendum was held. As a result, 52% voted for secession and 48% voted against it. The results were acknowledged, and the two-year transition period begun.

LUNAR BOTNET AND OPERATION MOONSTROKE

On 4 April 2021, *Sydney Morning Herald* reported that the DPCA took down the so-called "Lunar Botnet", which infected about 30,000 devices over a period of 3 months prior to the referendum. On 26 February 2021, DPCA launched "Operation Moonstroke" to disable and neutralise the botnet. The identities of those running the botnet remained unknown. Eventually, it was discovered that the command-and-control center was physically located on Antran territory but was masking its identity operating via the "dark web". The remote hacking operation disabled the botnet and removed "web shells" from the infected devices. Later, the DPCA issued a statement, reporting that many of the infected devices were located outside of Antara. Ravarian Minister of External Affairs condemned remote hacking as a "brazen act of extraterritorial enforcement in clear violation of international law, infringing on the rights of our citizens".

MS. WALTERS AND THE BRIEFCASE DOCUMENTS

Emma Walters, the wife of the Ravarian Ambassador Benny Walters, was arrested on 25 February 2021, after driving back from a party, intoxicated, and hitting a student Carlos Francis.

After searching her briefcase and identifying her as the wife of a diplomat by consulting her diplomatic passport, the Anataran police officer arrested her, and delivered her with her belongings to the police station. Later on, the sergeant at the station found and consulted the documents insider her briefcase, and deliberately handed them over to the Antaran Intelligence Agency, which then proceeded to secure copies. The documents appeared to be records of financial transactions and records of meetings going back five years, outlining a program led by the Ravarian Ambassador to fund SIP and SAD.

Ms Walters was released from custody only the next morning when she identified herself as the wife of a diplomat. The Ravarian Embassy condemned Antara's actions, demanded the return of the documents. Anantara accused Ravaria of intervening into its domestic affairs. The Ravarian Minister of External Affairs highlighted that Ravaria did

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nothing illegal by exercising political influence, assisting political candidates and causes, enhancing and amplifying political speech, and providing aid to parties and foundations.

THE RECORDING OF THE CONCILIATION MEETING

As the relations tensed up between both states, the foreign minister of Zemin, convinced both parties to conduct an *ad hoc* conciliation meeting of 30 May 2021. Both parties agreed to the creation of an audio recording of the meetings. Antara refused to make any concessions regarding Ravarian documents, which did not lead to the resolution of the dispute.

APPLICATION TO THE COURT

As a solution, both parties agreed to submit the matter to the International Court of Justice. Ravaria, however, objects to the admission of the briefcase documents and the conciliation meeting recording as evidence in the proceedings, as stipulated in Article 2(b) of the Special Agreement.

PLEADINGS ON BEHALF OF THE RESPONDENT

SUMMARY OF PLEADINGS

ADMISSIBILITY

OF THE DOCUMENTS AND THE RECORDING OF THE CONCILIATION MEETING

Antara is presenting inadmissible evidence before the Court, as those were unlawfully obtained. The documents were obtained in violation of the Vienna Convention on Diplomatic Relations, and the recordings – in violation of the confidentiality principle applicable to conciliation proceedings.

The documents are protected as private documents of a diplomatic agent and cannot be opened or consulted by the receiving state; in case the court does not find these documents protected as private documents, they would still enjoy diplomatic inviolability, as official documents of sending state and the mission.

For these reasons, the Court shall not admit the documents as evidence, despite its flexible approach, as states would feel encouraged to violate international law, and discouraged to resort to international adjudication. As for the recordings, states are required to ensure the respect of the confidentiality principle applying to procedures, unless otherwise agreed by the parties, therefore using them as evidence is unlawful, and the Court shall not admit them as evidence.

LAWFULNESS

OF RAVARIA'S ALLEGED CONTRIBUTIONS AND OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM

If the Court finds the documents inadmissible, circumstantial evidence introduced by Antara before the Court, will not be sufficient and clear enough, as it is not proving the issue without reasonable doubt. The high standard of proof would not be satisfied.

In case, the Court finds the documents admissible, these do not provide any proof for a violation of Ravaria's obligations under international law. SAD/SIPs conduct is not attributable to Ravaria, as both entities were neither acting under Ravaria's effective control, nor did Ravaria subsequently acknowledge or adopt their conduct as its own.

However, if the conduct is found attributable, it would not violate international law, *i.e.* the principle of non-intervention, as it neither interfered with Antara's *domaine réservé*, nor was coercive. With regards to Antara's sovereignty, Ravaria's activities neither disrupted the functioning of the referendum, nor impeded on Antara's governmental functions. Lastly, the

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right to self-determination of the Suthan people, justifies Ravaria's support, and does not conflict with Antara's territorial integrity, as it gave its consent.

UNLAWFULNESS

OF ANTARA'S ORDER SUSPENDING PROF. HUNLAND'S PANO ACCOUNT

Antara's order suspending Prof. Hunland Pano account violated international human rights obligations owed to Prof. Hunland and his followers on Pano.

The cyberactivity of Prof. Hunland in Pano was protected by the right to freedom of opinion and expression. The order suspending Prof. Hunland's Pano account constitutes an unlawful limitation of Prof. Hunland's right to freedom of expression. The restriction imposed by Antara fails to fulfil the cumulative requirements set forth by international human rights law because Antara's law does not satisfy the principles of predictability and transparency; the restriction did not pursue a legitimate aim; and it did not respect the principles of necessity and proportionality. Further, such limitation creates a "chilling effect", leading to self-censorship.

Moreover, Antara's suspension order was also in violation of international human rights obligations owed to his followers on Pano, as it constituted an unlawful restriction of the right to freedom of opinion and to seek and receive information of any kind, and a limitation of the freedom of thought and belief of Velan followers and right the freedom of peaceful assembly and association. Antara must cease such wrongful conduct and therefore rescind the order.

UNLAWFULNESS

OF ANTARA'S INTERFERENCE WITH COMPUTERS AND DEVICES IN RAVARIA

Antara's conduct with respect to the botnet takedown was in violation of international law and therefore entails its international responsibility. Antara's interference with electronic devices on Ravarian territory was not in conformity with both its treaty obligations the rules and arising from customary international law. It not only caused international tension but also constituted an internationally wrongful act.

Firstly, as botnet mitigation falls within the scope of the Budapest Convention, Antara violated its obligations on mutual assistance. Secondly, Antara unduly infringed on the sovereignty of Ravaria. The enforcement of domestic law in Ravaria's territory without consent usurped an inherently governmental function exclusively reserved to Ravaria. Thirdly, interference breached Antara's international human rights obligations, namely to the right to privacy and the right to property of Ravarian citizens. Moreover, the wrongfulness of the interference is not precluded.

PLEADINGS

I. THE DOCUMENTS OBTAINED IN THE ILLEGAL SEARCH OF THE BRIEFCASE FOUND IN THE VEHICLE DRIVEN BY MS. WALTERS AND THE 30 MAY 2021 RECORDING ARE INADMISSIBLE AS EVIDENCE IN THESE PROCEEDINGS

A. The Court shall not admit unlawfully obtained documents as evidence in the present proceedings

1. Despite the flexibility of its approach to the admissibility of evidence, the Court should exclude unlawfully obtained evidence

The Statute of the International Court of Justice (ICJ) contains no explicit rules addressing admissibility of evidence.¹ The Court's approach is characterized as flexible in nature.² According to *Corfu Channel*, any evidence presented to the Court by a State party will be accepted, unless the other party raises an objection to its admissibility.³ Ravaria raised a founded objection.⁴

When such objection is raised, unlawfully obtained evidence shall be excluded.⁵ Acts prohibited by international law should not allow a State to derive an advantage from them.⁶ By admitting such evidence, this Court would encourage violations of international law, cast serious doubts on the legal foundation of decisions it rendered,⁷ enable States to challenge the

¹ James Gerard Devaney, *The Law and Practice of Fact-Finding before the International Court of Justice*, Cambridge University Press (2016), p. 49.

² Shayan Khan, *The Issues of Admissibility Pertaining to Circumstantial, Contested, Classified, & Illicitly Obtained Evidence in the International Court of Justice*, Research Society of International Law Review (2017), p. 1; *Oil Platforms* (Islamic Republic of Iran v. United States of America), Judgment of 6 November 2003, separate Opinion of Judge Owada ¶¶50-52.

³ *Corfu Channel Case*, Judgment, 1949 ICJ Reports ("*Corfu Channel*"); Eduardo Valencia-Ospina, *Evidence before the International Court of Justice*, International Law Forum of International Law (1999), p.204; Peter Tomka, Vincent-Joël Proulx, *The evidentiary practice of the World Court* (2015), p. 370.

⁴ *Compromis*, ¶¶41, 44, 45.

⁵ Tomka, Proulx, p. 369.

⁶ Sara Mansour Fallah, *The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals*, The Law and Practice of International Courts and Tribunals (2020), p. 164.

⁷ Siyuan Chen, *Re-assessing the Evidentiary Regime of the International Court of Justice: A Case for Codifying Its Discretion to Exclude Evidence*, International Commentary on Evidence (2015), pp. 1-40.

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limits of acceptability, causing irreversible harm to another States rights.⁸ Thus, evidence obtained in violation of international law should be excluded by the Court.

2. In any event, international law precludes this Court from using unlawfully obtained evidence

a) The poisonous tree doctrine is a general principle precluding the admissibility of unlawfully obtained evidence

The poisonous tree doctrine is a general principle of law recognized by all nations, mentioned as such in various international and domestic court decisions.⁹ This principle excludes evidence obtained from or with the assistance of illegally obtained information, or because of an unlawful act committed by officials.¹⁰ The documents, recordings, and the resulting investigation, hence the fruit, if obtained by virtue of an unlawful conduct, hence the poisonous tree, would be inadmissible as evidence.¹¹ Thus, the unlawfully obtained evidence should be found inadmissible in accordance with this principle.

b) In any event, the Court should use the “balancing of interests test”, which would preclude admission of unlawfully obtained evidence

The Court should resort to a “balancing of interest test”¹² estimating the gravity of the violation in the obtention of the evidence, to the gravity of the internationally wrongful act to be proven.¹³ The Court should take into account the gravity of the violation of the diplomatic inviolability and the principle of confidentiality that Antara committed in procuring the evidence, and consider such illegally obtained evidence as inadmissible if the balance of interests weighs in favour of exclusion.¹⁴ The gravity of the violations of diplomatic immunity and principle of confidentiality would prevail and thus render the evidence inadmissible.

⁸ Chen, p. 33.

⁹ *Nardone v. United States*, Judgment, 1939 U.S. Supreme Court, ¶341; *Gäfgen v. Germany*, Judgment, 2015 ECtHR, ¶¶25,73,157.

¹⁰ Robert M. Pitler, *The Fruit of the Poisonous Tree Revisited and Shepardized*, California Law Review (1968), p. 592.

¹¹ Compromis, ¶39.

¹² Fallah, p. 165; Uniform Evidence Law (ALRC Report 102), 2010, Australia, ¶16.81; Evidence Act, 2011, Nigeria; Constitution of Kenya, 2010.

¹³ Fallah, p. 165.

¹⁴ Fallah, p. 171.

B. The documents found in the briefcase were obtained in violation of diplomatic inviolability and are thus inadmissible

1. Inviolability precludes admissibility

The ICJ's Statute binds the Court to follow international law and ensure that it is respected when deciding upon matters.¹⁵ In *Tehran*, this Court stressed that “there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies, creating reciprocal obligations for States for that purpose”¹⁶ The ICJ should not indirectly condone and encourage violations of international law by permitting Antara to violate the fundamental principle of inviolability enshrined in VCDR, given that it has an obligation to act in accordance with international law, as the UN's principal judicial organ¹⁷ On this basis, the Court should exclude the documents obtained in violation of immunities as evidence.

2. Antara violated the inviolability rule

a) Retaining and opening the briefcase violated the inviolability of private property of Ms. Walters

Under Article 30(2) VCDR, private property of a diplomatic agent enjoys inviolability.¹⁸ Such inviolability refers to all property,¹⁹ such as “goods that are intended for his personal use or essential to his livelihood”.²⁰ Ms. Walters, as wife of a diplomatic agent, as well enjoys the immunities accorded to diplomatic agents, their property and documents.²¹ This applies to Ms. Walters' briefcase, as it constitutes her personal property containing her passport and license,²² which are personal documents intended for her personal use and essential to her livelihood, *i.e.* being able to identify herself as a diplomatic agent. Naturally, these important documents would not have been kept in a baggage that is not her personal belonging. Thus, Antara violated the inviolability of private property of Ms. Walters.

¹⁵ Statute of the International Court of Justice (1945), (“ICJ Statute”), Article 38; Chen, p. 1.

¹⁶ *United States Diplomatic and Consular Staff in Tehran*, Judgment, 1980 ICJ, p. 3, ¶91.

¹⁷ ICJ Statute, Article 1.

¹⁸ Vienna Convention on Diplomatic Relations (1961), (“VCDR”), Article 30(2).

¹⁹ Cecil Hurst, *Les immunités diplomatiques*, Collected Courses of the Hague Academy of International Law (1926), p. 162.

²⁰ ILC Yearbook 1958, p. 98.

²¹ VCDR, Article 37.

²² Compromis, ¶35.

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b) Consulting and disclosing the documents contained in Ms. Walters briefcase violated the inviolability of private papers and correspondence

The private papers and correspondence enjoy inviolability according to Article 30(2) VCDR, as Antara is under a “duty to protect and to abstain from any act that might violate their inviolable character”,²³ such as searching or intercepting them under the pretext that they are not official.²⁴ Additionally, Article 36(2) VCDR²⁵ exempts the personal baggage from search and inspection, and Article 30 VCDR²⁶ provides full immunity to the exempted personal baggage and its content, as an extension of the inviolability of their property.²⁷

After seizing the personal baggage, and consulting the documents contained therein, it must have appeared to the officer that these benefit from diplomatic inviolability. The officer failed to respect their inviolable character, deliberately handing them over to Antaran National Intelligence Agency.²⁸ Thus, consulting and disclosing the private documents violated their inviolability.

c) Alternatively, the examination of the documents by Antara violated the principle of inviolability of official correspondence of the mission

In case the documents did not enjoy diplomatic immunity as private documents, they would qualify as official correspondence of the mission, e.g. the correspondence relating to the mission and its functions, and hence enjoy inviolability under Article 27 VCDR.²⁹ Even if the bag is not diplomatic, the official correspondence inside still enjoys diplomatic inviolability that would be violated if retained by public officials.³⁰ The correspondence from the sending government to the mission qualifies as official correspondence and is thus covered by inviolability,³¹ making it unlawful for public authorities of the receiving State to open and examine it.³²

²³ Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, Oxford Commentaries on International Law (2016), p. 274.

²⁴ Denza, p. 274

²⁵ VCDR, Article 36(2).

²⁶ VCDR, Article 30.

²⁷ Denza, p. 230.

²⁸ Compromis, ¶¶36, 37.

²⁹ VCDR, Article 27(2).

³⁰ Denza, p. 190.

³¹ ILC Yearbook 1958, p. 143.

³² Denza, p. 190.

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Antaran officials retained and examined the official correspondence that Ravaria addressed to its mission. These documents enabled Ravarian officials and the mission to represent and protect the interest of its sending State in Antara. The diplomatic status was clearly identified and acknowledged, however deliberately ignored and violated by Antaran public officials,³³ thus, violating the inviolability of the correspondence of Ravaria's diplomatic mission.

d) Alternatively, Antara violated the inviolability of official documents and archives of a diplomatic mission

Article 24 VCDR confers protection to official documents and archives through inviolability.³⁴ Inviolability covers them “at any time, wherever they might be”,³⁵ including outside the premises or when being circulated by “virtue of improper means”.³⁶ Inviolability imposes a duty to protect and to abstain from any interference,³⁷ presupposing that, if the documents fall into unauthorized hands, they still benefit from diplomatic inviolability, provided that they remain a part of the mission archive and its content have not been disseminated into the public domain.³⁸

The documents found in Ms. Walters' briefcase can be identified as official documents and archives of the mission. When the documents fell in unauthorized hands of Antaran officials, the documents remained protected against interference with diplomatic inviolability,³⁹ as they remained documents of the mission and had not been widely disseminated in the public domain: they were delivered to the Antaran government but were not published or divulged to the wide public.⁴⁰ Thus Antara violated this principle as the documents remained inviolable.

³³ Compromis, ¶¶36-38.

³⁴ *Bancoult (No 3) v Secretary of State for Foreign and Commonwealth Affairs* (8 Feb 2018), ¶73; ILC Yearbook 1957, p. 137.

³⁵ VCDR, Article 24.; *Shearson Lehman Brothers Inc v Maclaine Watson and Co Ltd and International Tin Council*, Judgment, 1988 U.K. Supreme Court, ¶20; United Nations Conference on Diplomatic Intercourse and Immunities, U.N.Doc. A/CONF.20/14/Add.1, 1961, ¶22.

³⁶ Malcolm N. Shaw, *International Law*, Cambridge University Press, 6 ed. (2008), p. 763.

³⁷ ILC Yearbook 1957 Commentary on Article 18, p. 137; Denza, p. 158.

³⁸ *Shearson Lehman Brothers Inc v Maclaine Watson*, ¶20.

³⁹ Compromis, ¶¶35-37.

⁴⁰ Compromis, ¶¶37-38.

C. The recordings of the conciliation meeting were obtained in violation of the principle of confidentiality and are thus inadmissible

1. Confidentiality precludes admissibility

Since *Chorzow Factory*, it is presumed that evidence obtained in conciliation proceedings is not admissible before this Court.⁴¹ In the *Damube Commission*, the Court refused the admission of documents as pieces of evidence, since these were “confidential” and had not “been placed before the Court by, or with the consent of, the competent authority.”⁴²

Several courts ruled in favour of the inadmissibility of such evidence, namely an audiotape unlawfully obtained⁴³ or the recording of a conversation without the other parties’ consent, because they breach the principle of confidentiality and the parties’ right to privacy and are contrary to the good faith principle.⁴⁴ In *Questions Relating to the Seizure and Detention of Certain Documents and Data*, the Court considered that interfering with and not safeguarding the confidentiality of materials causes considerable harm with serious detrimental effects in a judicial procedure.⁴⁵

Ravaria only agreed to a recording to facilitate the preparation of a transcript,⁴⁶ but did not consent to the use of it as evidence.⁴⁷ Antara did not act in good faith introducing it as evidence.⁴⁸ Thus the Court should not accept the recordings obtained in violation of the confidentiality principle as evidence.

⁴¹ Sven Koopmans, *Diplomatic dispute settlement: the use of inter-state conciliation* (2008), p. 158.

⁴² W. Michael Reisman, Eric E. Freedman, *The Plaintiff's Dilemma: Illegally Obtained Evidence and Admissibility in International Adjudication*, *American Journal of International Law* (1982), p. 743; *Jurisdiction of European Commission of Danube Between Galatz and Braila*, Advisory Opinion, 1927 PCIJ, ¶79.

⁴³ *EDF (Services) Limited v. Romania*, Procedural Order No. 3, 2008 ICSID, ¶38.

⁴⁴ Fallah, p.159; *Methanex Corporation v. United States of America*, ¶54.

⁴⁵ *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures Order, 2014 ICJ (“*Certain Documents and Data*”), ¶42.

⁴⁶ *Compromis* ¶43.

⁴⁷ *Compromis*, ¶43-45.

⁴⁸ *Compromis*, ¶45.

2. Antara violated the principle of confidentiality

a) Confidentiality applies to conciliation proceedings, unless otherwise determined by the parties

Dispute settlement by conciliation is provided for in the Vienna Convention on the Law of Treaties (VCLT).⁴⁹ The rules on international conciliation proceedings, as laid out by the UNGA Model Rules on Dispute Settlement,⁵⁰ provide that the entire procedure and written records remain confidential unless the parties agree otherwise.⁵¹ This rule of customary character provided for in international regulations⁵² and case law,⁵³ imposes on States an obligation to abide by the rules on confidentiality of conciliation proceedings. As both parties never agreed on an alternative rule replacing or excluding the rule of procedure,⁵⁴ the conciliation meeting of 30 May 2021 was governed by the confidentiality principle.

b) Using the recordings of the conciliation proceedings as evidence in the Court would violate their confidential character

The rule of confidentiality applies to conciliation proceedings, therefore proposals and statements made during the conciliation cannot be used in any subsequent phase of the dispute settlement process, or made public, unless there is a consensus among the parties of the dispute.⁵⁵ As stated in *Questions Relating to the Seizure and Detention of Certain Documents and Data*, a State has a right to the protection of confidentiality of any document and data in the context of a dispute settlement proceeding.⁵⁶ Thus, by disclosing the recordings obtained

⁴⁹ Vienna Convention on the Law of the Treaties (1989) (“VCLT”), Article 66. and Annex; UN Convention on the Law of the Sea (1982), Article 284 and Annex V; Charter of the United Nations (1945) (“UN Charter”), Article 33.

⁵⁰ U.N.Doc.Res.73/199; A/RES/57/18, Article 9: “Unless otherwise agreed by the parties, all information relating to the conciliation proceedings shall be kept confidential.”

⁵¹ Linda C. Reif, *Conciliation as A Mechanism For The Resolution Of International Economic And Business Disputes*, Fordham International Law Journal (1990), p. 586.

⁵² United Nations Model Rules for the Conciliation of Disputes between States, A/RES/50/50, Articles 25-26; General Act for the Pacific Settlement of International Disputes, Article 10; Resolution on conciliation, Institut de Droit International, Article 5.

⁵³ Dai Tamada, *The Timor Sea Conciliation: The Unique Mechanism of Dispute Settlement*, European Journal of International Law (2020), pp.322,329; *Maritime Boundary between Timor-Leste and Australia* (Timor Sea conciliation), PCA Case no. 2016-10, ¶60.

⁵⁴ Compromis, ¶42-43.

⁵⁵ Giuseppe Palmisano, *Diplomatic and Jurisdictional Aspects in Conciliation procedures: Conciliation between Dispute settlement and conflict prevention*, Conciliation in International Law (2017), pp. 27-30.

⁵⁶ *Certain Documents and Data*, ¶27.

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in the outcome of the conciliation meeting, without Ravaria's consent,⁵⁷ Antara violated the principle of confidentiality.

II. THE ALLEGED FINANCIAL CONTRIBUTIONS AND CYBER-OPERATIONS IN CONNECTION WITH THE SUTHAN REFERENDUM WERE CONSISTENT WITH INTERNATIONAL LAW

A. As the documents and recordings are not admissible as evidence, the circumstantial evidence presented by Antara does not suffice to support its claims

1. The Court has not relied much on circumstantial evidence in the past and it encompasses a high burden of proof

a) The Court should not rely on the circumstantial evidence in the absence of direct evidence

Circumstantial evidence is established through the inference of facts and circumstances.⁵⁸ In *Bosnian Genocide*, the Court refused to use circumstantial evidence to prove the allegations, considering it insufficient.⁵⁹ According to *Island of Las Palmas*, a court should cautiously admit it, and critically compare it with direct evidence when provided.⁶⁰ Generally the Court relies only on direct evidence, and does not turn to circumstantial evidence in the absence of direct evidence.⁶¹ As stated in *Croatia's crime of Genocide*, a State cannot prevail relying solely on circumstantial evidence to prove the allegations.⁶²

Antara could solely rely on circumstantial evidence, namely the investigation,⁶³ and the statement from the Ravarian Minister of Foreign Affairs.⁶⁴ Both pieces of evidence qualify as indirect evidence as they fail to prove the allegations without connecting and interpreting the facts from the investigation and the statement. Antara provides no direct evidence that could

⁵⁷ Compromis, ¶43-45.

⁵⁸ Sharnagan Aravindakshan, *Cyberattacks: a look at evidentiary thresholds in International Law*, Indian Journal of International Law (2021), ¶¶285-299.

⁵⁹ Aravindakshan, ¶¶285-299; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007 ICJ, ("Bosnian Genocide"), p. 43 ¶¶ 196-197, 373.

⁶⁰ Michael P. Scharf, Margaux Day, *The International Court of Justice's Treatment of Circumstantial Evidence and Adverse Inferences*, Chicago Journal of International Law (2012), p. 143.

⁶¹ Aravindakshan, ¶¶285-299.

⁶² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v Serbia), Application Instituting Proceedings, 1999 ICJ, p. 2 ¶1.

⁶³ Compromis, ¶39.

⁶⁴ Compromis, ¶41.

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be corroborated by circumstantial evidence. This Court shall therefore not rely solely on this circumstantial evidence. Alternatively, it would be insufficient to prove the alleged conduct.

b) Even if the Court relied on circumstantial evidence, the high standard of proof applicable would not be satisfied

According to *Corfu Channel*, “proof may be drawn from inferences of fact provided they leave no room for reasonable doubt”.⁶⁵ In case no direct evidence is provided, a high standard of proof applies to circumstantial evidence.⁶⁶ The Court must be convinced that it proves an issue without reasonable doubt,⁶⁷ not to reject its admissibility. Such evidence is required to be clear and precise as stated in *Cameroun v. Nigeria*.⁶⁸ In *Bosnian Genocide*, the Court relied partially on circumstantial evidence, and partially rejected it, finding it not reliable enough to prove the allegations.⁶⁹

The circumstantial evidence Antara could invoke, such as the statement delivered by Ravaria’s Minister of External Affairs,⁷⁰ is not sufficient, as it is neither clear nor precise enough. Stating that it is exercising political guidance and promoting Velan’s ideals do not amount to Ravaria admitting any illegal conduct. Further, it does not provide any proof of the allegations, as Antara’s accusations against Ravaria cannot be proven without any reasonable doubt.⁷¹ Thus, Antara’s circumstantial evidence is not reliable and does not meet the high standard of proof required.

⁶⁵ *Corfu Channel*, p. 18.

⁶⁶ Aravindakshan, ¶¶285-299.

⁶⁷ Scharf, Day, p. 147.

⁶⁸ *Land and Maritime Boundary between Cameroon and Nigeria* [(Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, 2002 ICJ, (“*Land and Maritime Boundary*”), ¶ 321-322; *Island of Palmas case* [(Netherlands v. United States of America), Reports of International Arbitral Awards vol. II, Decision, 928 UNRIAA], p. 848, 851-852.

⁶⁹ Scharf, Day, p. 149.

⁷⁰ Compromis, ¶41.

⁷¹ Compromis, ¶40-41.

B. Shall this Court find the documents and recordings admissible as evidence, they would not demonstrate any violation of international law by Ravaria

1. The cyber-operations and financial contributions are not attributable to Ravaria

a) *SAD and SIP did not act under the control, direction or instruction of Ravaria*

Under Article 8 of the ARSIWA, of customary character,⁷² the conduct of entities is attributable to a State when they are “acting on the instructions of, or under the direction or control of that State in carrying out the conduct”.⁷³ The effective control test requires a high degree of dependency⁷⁴ and is the standard to establish control, as stated in *Nicaragua*.⁷⁵ The overall control test, as reflected in *Tadić*⁷⁶ is not an appropriate standard to assess State responsibility.⁷⁷

To meet the test, Antara should demonstrate a connection based on effective control to establish that the acts have been ordered or imposed on SAD and SIP by Ravaria.⁷⁸ A simple dependence, support, or even a State’s “financing”⁷⁹ is insufficient to reach the high standard and to attribute the conduct.⁸⁰

Ravaria provided funds to SAD and SIP, in support of the independence campaign,⁸¹ which does not suffice to prove effective control as Ravaria neither assumed any responsibility within the entities, nor gained any power of decision through the financing.⁸² Moreover, according to Antara’s own campaign financing legislation, the financing did not violate any law and is therefore in accordance with Antara’s domestic legislation.⁸³ Ravaria expressed its

⁷² *Bosnian Genocide*, ¶398.

⁷³ Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001) (“ARSIWA”) Article 8, p. 47.

⁷⁴ *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Merits), Judgment, 1986 ICJ, (“*Nicaragua*”) ¶115.

⁷⁵ *Nicaragua*, ¶¶105-115.

⁷⁶ *Judgment of the ICTY Appeals Chamber in the Tadić’ case* (IT-94-1-A, Judgment, 15 July 1999), ¶120.

⁷⁷ *Bosnian Genocide*, ¶406.

⁷⁸ Kristen Boon, *Are control tests fit for the future? The slippage problem in attribution doctrines*, Melbourne Journal of International Law (2014), p. 9.

⁷⁹ *Nicaragua*, ¶115.

⁸⁰ Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press (2017), (“Tallinn 2.0”), ¶4.1.4.

⁸¹ Compromis, ¶37a.

⁸² Compromis, ¶37a.

⁸³ Compromis, ¶39.

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affinity to the campaign but ignored the specificities of the content or its *modus operandi* and could not have foreseen SAD and SIP's conduct.⁸⁴ Therefore, Ravaria did not have effective control over the conduct of SAD and SIP, which is hence not attributable to it.

b) Ravaria neither acknowledged nor adopted SAD's and SIP's conduct as its own

Under Article 11 ARSIWA, the conduct of a private person or entity can be recognised as an act of a State if it acknowledges and adopts the conduct as its own.⁸⁵ Merely acknowledging the factual existence of conduct or verbally approving it does not suffice for attribution,⁸⁶ as mere support and endorsement cannot be a basis for attribution because there needs to be an assumption of responsibility emanating from the State.⁸⁷

The statement of Ravarian Minister of External Affairs does not constitute evidence to prove that Ravaria ultimately recognized, approved or adopted the conduct of SAD and SIP as its own, or assumed any responsibility over their conduct.⁸⁸ The Minister was simply referring to its State's political ideals and promotions, without referring to SAD and SIP, nor mentioning their conduct. Lastly, the Minister's use of pronoun "we" is bearing neither an assumption of responsibility, nor an acknowledgement or adoption of any conduct on behalf of Ravaria. It rather presents normal vocabulary used by a State representative to refer to its State. Thus, the conduct is not attributable to Ravaria.

2. Even if the cyber-operations were attributable to Ravaria, they did not violate its obligations under international law

a) The cyber-operations and financial contributions did not violate the principle of non-intervention

i. The acts of external political guidance are not interfering with Antara's domaine réservé

Domaine réservé covers a sphere of State's activity that is "not, in principle, regulated by international law".⁸⁹ To prove interference with the *domaine réservé*, Antara would have to

⁸⁴ Compromis, ¶37, let. c-d.

⁸⁵ ARSIWA, Article 11, p. 53.

⁸⁶ ARSIWA, Article 11, p. 53.

⁸⁷ ARSIWA, Article 11, p. 53.

⁸⁸ Compromis, ¶41.

⁸⁹ Harriet Moynihan, *The Application of International Law to State Cyberattacks Sovereignty and Non-Intervention*, International Law Programme (2019), ¶86.

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prove that Ravaria attempted to deprive it of its free will in relation to the exercise of its sovereign rights.⁹⁰ In financing pro-independence campaigns, and showing its affinity to the cause, Ravaria did not infringe on Antara's *domaine réservé*, as it was not depriving Antara of its sovereign and free will to exercise its political governmental functions to run a referendum. Ravaria was at most supporting the political cause in Sutha,⁹¹ thus, did not interfere with Antara's *domaine réservé*.

ii. The exercise of political guidance and support is not coercive

A prohibited interference contains an element of coercion.⁹² A coercive act “must have the potential for compelling the target State to engage in an action that it would otherwise not take.”⁹³ Only affirmative acts of a certain magnitude can be qualified as coercive, as they must deprive the State of control over the matter and subordinate the sovereign will of the target State.⁹⁴ This sets a high standard of proof.⁹⁵

Ravaria's exercise of political guidance, by supporting the political campaigns and providing funds,⁹⁶ did not reach the level of coercion, as it neither subordinated Antara to its sovereign will, forcing Antara to act in a certain way, nor deprived it of control. Also, it was not decisive for the result, as it took place long before the referendum. Moreover, the Lunar Botnet was taken down one week before the referendum, leaving no chance of exerting decisive influence.⁹⁷ Lastly, the Suthan people had striven for independence long before the actual referendum took place, which underlines that its outcome cannot be based on Ravaria's support, and therefore shows no sign of coercion.

b) The cyber-operations and financial contributions did not violate Antara's sovereignty, as they were not directed against the State's system, nor did they usurp Antara's inherent governmental functions

Sovereignty may be violated by cyber activities on two separate grounds, namely the degree of encroachment on Antara's territorial integrity and upon interference with or usurpation of

⁹⁰ Moynihan, ¶110.

⁹¹ Compromis, ¶37.

⁹² *Nicaragua*, ¶108.

⁹³ Tallinn 2.0., Rule 66, ¶21.

⁹⁴ Moynihan, ¶86.

⁹⁵ William Osoff, *Hacking the domaine réservé: The Rule of Non-Intervention and Political Interference in Cyberspace*, Harvard International Law Journal (2021), p. 309.

⁹⁶ Compromis, ¶37, 41.

⁹⁷ Compromis, ¶31.

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inherently governmental functions.⁹⁸ Ravaria's operations involved merely information sharing and financial support that did not prevent Antara's exercise of its sovereign prerogatives to conduct the referendum. Such functions are not inherently governmental, as they can be reproduced by citizens and other non-State actors. Moreover, such activities did not disrupt the proper functioning of the election hardware or block any access to information. No loss of functionalities could be identified, nor any injury concerning the running of the referendum.⁹⁹ Therefore, Ravaria's cyber-operations and financial contributions did not violate Antara's sovereignty.

c) Ravaria was justified to support the exercise of the right to self-determination by the people of Sutha

The right to self-determination an essential human right¹⁰⁰ of universal¹⁰¹ and *erga omnes* character,¹⁰² has been recognized in the UN Charter¹⁰³ and in the jurisprudence of the Court.¹⁰⁴ According to the UN General Assembly, people exercising their right to self-determination are "entitled to seek and to receive support in accordance with the purposes and principles of the Charter,"¹⁰⁵ and States are encouraged to "continue to support and assist the people in the early realization of their right to self-determination."¹⁰⁶

Via the referendum, the people of Sutha have exercised their right to self-determination.¹⁰⁷ Such referendum is not "unlawful" under international or domestic law, and the Suthan people have a right to external self-determination, as stated in the Treaty of Singapore, and Article 119 of Antara's Constitution.¹⁰⁸ The exercise of this right does not thus conflict Antara's territorial integrity, since the latter gave its consent. The promotion and

⁹⁸ Tallinn 2.0., Rule 4.

⁹⁹ Compromis, ¶¶30, 37,41.

¹⁰⁰ Self-Determination Integral to Basic Human Rights, Fundamental Freedoms,U.N.Doc. GA/SHC/4085.

¹⁰¹ U.N.Doc. A/RES/51/84.

¹⁰² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 ICJ, ("Wall in Occupied Palestinian Territory") p. 136; *East Timor* (Portugal v. Australia), Judgment, 1995 ICJ, ("East Timor"), p. 90, ¶29.

¹⁰³ UN Charter, Article 1(2).

¹⁰⁴ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276* (1970) Advisory Opinion, 1971 ICJ, pp. 31- 32, ¶¶ 52-53; *East Timor*, p. 90, ¶29.

¹⁰⁵ U.N.Doc. A/RES/2526 (XXV).

¹⁰⁶ U.N.Doc. A/RES/63/165.

¹⁰⁷ Compromis, ¶30.

¹⁰⁸ Compromis, ¶¶6, 9.

support provided to Suthan people in exercising their right of self-determination is thus a justification for any alleged interference.

III. ANTARA'S ORDER SUSPENDING PROF. HUNLAND'S PANO ACCOUNT WAS IN VIOLATION OF INTERNATIONAL LAW, AND ANTARA MUST THEREFORE RESCIND THE ORDER

A. The suspension order was in violation of international human rights obligations owed to Prof. Hunland

1. Ravaria has standing to bring claims in relation to Antara's conduct

Ravaria has standing to bring this claim as it complies with the requirements to exercise diplomatic protection¹⁰⁹ since the suspension order affects the rights of a Ravarian national, Prof. Hunland,¹¹⁰ who has exhausted all the local remedies.¹¹¹ In any event, the obligations under the International Covenant on Civil and Political Rights (ICCPR) are owed to Ravaria *erga omnes partes*,¹¹² since the protection of human rights is a collective obligation and Ravaria has a "legal interest in the fulfilment of such obligation by every other State".¹¹³

2. Prof. Hunland's activity is covered by the right to freedom of expression

a) International human rights law applies online

It is broadly accepted that international human rights law applies to cyberactivity¹¹⁴ and, hence human Prof. Hunland enjoys the same rights while pursuing activity on Pano as offline.¹¹⁵

¹⁰⁹ ARISWA, Article 44(b) *a contrario*.

¹¹⁰ Compromis, ¶13.

¹¹¹ Draft Articles on Diplomatic Protection, with commentaries (I.L.C Yearbook 2006-II), 2008, Article 14; *Fressoz and Roire v. France*, Judgment, 1990 ECtHR, ¶37; Compromis, ¶28; Corrections and clarifications, ¶2.

¹¹² ARISWA, Article 48(1); Linos-Alexander Sicilianos, *The Classification of Obligations and the Multilateral Dimension of the Relations of International Responsibility*, EJIL (2002), p. 1136.

¹¹³ HRC, General Comment No.31, CCPR/C/21/Rev.1/Add.13 (2004), ¶2.

¹¹⁴ Tallinn 2.0, Rule 34, ¶1; HRC, The Promotion, Protection and Enjoyment of Human Rights on the Internet, A/HRC/32/L.20 (2016), ¶1; Council of the European Union, EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014) ("EU Guidelines"), ¶6.

¹¹⁵ Tallinn 2.0, rule 35, ¶1.

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b) Prof. Hunland's cyberactivity on Pano falls within the scope of the right to freedom of opinion and expression

Prof. Hunland has the right to hold all forms of opinions without interference.¹¹⁶ When shared, such opinions are protected by the right to freedom of expression.¹¹⁷ This includes political and religious discourse and commentaries on public affairs and human rights.¹¹⁸ The scope of Article 19(2) ICCPR extends to cyber-enabled expression through new communication technologies,¹¹⁹ is not limited to correct statements,¹²⁰ and protects information that may offend, shock, and disturb.¹²¹ Accordingly, all Prof. Hunland's activities on Pano were protected by the right to freedom of expression, regardless of the form, subject and truthfulness of their content.

3. The right to freedom of expression of Prof. Hunland was unlawfully restricted

The suspension order issued under Section 5 of PACA constitutes an unlawful limitation of Prof. Hunland's right to freedom of expression as it fails to fulfil the cumulative requirements set forth by Article 19(3) ICCPR.¹²²

a) Section 5 of PACA fails to meet the requirement that the limitation is "provided by law"

Restrictions must be provided by law¹²³ in a precise manner to enable individuals to regulate their conduct accordingly.¹²⁴

i. The definitions are not sufficiently precise

PACA is not formulated with sufficient clarity and precision to allow individuals to reasonably foresee what sorts of expressions would be restricted.¹²⁵ PACA's definition of "election

¹¹⁶ International Covenant on Civil and Political Rights (1966), ("ICCPR"), Article 19(1); HRC, General Comment No.34, CCPR/C/GC/34 (2011), ¶9.

¹¹⁷ ICCPR, Article 19(2).

¹¹⁸ U.N.Doc. CCPR/C/GC/34, ¶11 ; EU Guidelines, ¶18.

¹¹⁹ HRC, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/17/27 (2011), ¶21; Tallinn 2.0, rule 34, ¶1.

¹²⁰ HRC, Disinformation and freedom of opinion and expression, A/HRC/47/25 (2021), ¶38.

¹²¹ U.N.Doc.A/HRC/47/25, ¶38; Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda ("Joint Declaration") (2017), ¶1.

¹²² ICCPR, Article 19(3).

¹²³ U.N.Doc. CCPR/C/GC/34, ¶24.

¹²⁴ U.N.Doc. CCPR/C/GC/34, ¶25.

¹²⁵ Compare for the requirements U.N.Doc. CCPR/C/GC/34, ¶25.

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misinformation” is formulated with a high level of abstraction, giving the authorities a wide margin of appreciation, which entails serious risks of content being blocked arbitrarily.¹²⁶ The term “misleading statement” is too subjective, as its meaning depends fully on the interpretation of the receptor. The word “likely” implies that the expression may or may not cause an effect in an election. Prohibiting information based on broad definitions¹²⁷ is incompatible with Article 19(3) ICCPR,¹²⁸ conferring Antaran authorities an unfettered discretion¹²⁹ to infringe the freedom of expression.¹³⁰

ii. In any event, the suspension order constitutes an overbroad application of Section 5 of PACA

The suspension order represents an overbroad¹³¹ application of disposition 1(b) of Section 5 of PACA, since all Prof. Hunland’s posts on Pano were deleted¹³² while only 63% were flagged by Pano as potentially “spreading misinformation”.¹³³ Had the Antaran Court proceeded to an examination *in concreto*, fewer posts might have fallen within the scope of this provision. Alternatively, Antara’s act was not in conformity with its international obligations towards Ravaria¹³⁴ as it was incompatible with the objectives of the ICCPR.¹³⁵

b) The restriction does not pursue legitimate aim and, in any event, Antara failed to demonstrate the precise nature of the threat

Article 19(3) ICCPR establishes that any restriction must protect the rights or reputation of others, or national security and public order. The protection of the rights of others¹³⁶ cannot be invoked as a legitimate aim because, any restriction of the freedom of expression to protect the rights of voters¹³⁷ must be narrowly tailored¹³⁸ to avoid impeding political debate.¹³⁹

¹²⁶ U.N.Doc. A/HCR/17/27, ¶26.

¹²⁷ U.N.Doc. A/HCR/47/25, ¶54.

¹²⁸ Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, OL MYS 1/2018, p. 2; Joint Declaration, ¶2(a).

¹²⁹ U.N.Doc. CCPR/C/GC/34, ¶25.

¹³⁰ U.N.Doc. A/HCR/17/27, ¶31.

¹³¹ U.N.Doc. CCPR/C/GC/34, ¶34.

¹³² Compromis, ¶27.

¹³³ Compromis, ¶24.

¹³⁴ *Certain German Interests in Polish Upper Silesia*, Judgment, 1926 PICJ, ¶52.

¹³⁵ U.N.Doc. CCPR/C/GC/34, ¶26; U.N.Doc. CCPR/C/21/Rev.1/Add.13, ¶13.

¹³⁶ ICCPR, Article 19(3)(a).

¹³⁷ ICCPR, Article 25.

¹³⁸ U.N.Doc. A/HCR/47/25, ¶42.

¹³⁹ U.N.Doc. CCPR/C/GC/34, ¶28.

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Additionally, Antara's restriction did not pursue legitimate aims of protection of national security or public order.¹⁴⁰ Spontaneous protests are an essential feature of public order and do not constitute *per se* a threat to it, even where they cause disruptions.¹⁴¹ Moreover, Prof. Hunland's activity was not inciting violence,¹⁴² as he did not author posts advocating recourse to violent actions and his posts did not express hatred towards identified persons.¹⁴³ Even if the legitimacy of the aim was accepted, Antara failed to establish and demonstrate in a specific fashion¹⁴⁴ the direct and immediate connection¹⁴⁵ between the expression and the threat.

c) The restriction was not necessary and proportionate

Freedom of expression is at the core of democracy and the enjoyment of other rights, hence a strong protection to expressions of public interest, including criticism of governments and speech by public figures¹⁴⁶ is required.

i. Antara failed to prove the necessity of the suspension order

Due to the unique characteristics of new communication technologies, the restrictions adopted are not necessary.¹⁴⁷ The capacity of Pano to caution individuals regarding deceptive content¹⁴⁸ and the ability of users to instantly reply pointing the falsehood of Prof. Hunland's posts,¹⁴⁹ hence restoring the harm caused, render Antara's order unnecessary.

ii. The suspension order was not the least restrictive means to achieve the objective

Even if proven necessary, Antara had at its disposal more targeted measures that would have avoided rendering inaccessible content beyond what was judged unlawful¹⁵⁰ and interfered less seriously with Prof. Hunland's right to freedom of expression, namely by exclusively deleting

¹⁴⁰ ICCPR, Article 19(3)(b); EU Guidelines, ¶525.

¹⁴¹ Global Campaign for Free Expression, Submissions to General Comment No. 37 (2018), ¶42.

¹⁴² *Gözel v. Turkey*, Judgment, 2010 ECtHR, ¶56.

¹⁴³ ICCPR, Article 20(2); *Nedim Sener v. Turkey*, Judgment, 2014 ECtHR, ¶116.

¹⁴⁴ U.N.Doc. CCPR/C/GC/34, ¶35.

¹⁴⁵ *Hak Chul Shin v. Republic of Korea*, CCPR/C/80/D/926/2000 (2004), ¶7.3; U.N.Doc. CCPR/C/GC/34, ¶35.

¹⁴⁶ U.N.Doc. A/HCR/47/25, ¶42.

¹⁴⁷ U.N.Doc. A/HCR/17/27, ¶27.

¹⁴⁸ Compromis, ¶24.

¹⁴⁹ Compromis, ¶23.

¹⁵⁰ U.N.Doc. A/HCR/17/27, ¶31.

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the messages constituting “election misinformation” under article 1(d) Section 5 of PACA. As Pano had flagged posts containing false or malicious content,¹⁵¹ analyzing and isolating the content on “election misinformation” was technically possible.

iii. As Prof. Hunland is a public figure, the effects on public interest of his suspension from Pano should have been considered

The value of uninhibited expression of public figures in the political domain is especially high,¹⁵² because citizens must have the possibility to inform themselves about the political system.¹⁵³ Being representative of the SIP,¹⁵⁴ Prof. Hunland is a political figure, and his posts are circumscribed in the context of public debate concerning the Sutha’s autonomy. Antara limited the political debate whilst the public interest in the disclosure of such information ahead of a critical democratic moment (*i.e.*, the Suthan referendum) is clearly preponderant.

d) The restriction of Prof. Hunland’s account produces a chilling effect causing a larger audience to self-censor themselves

The chilling effect is the deterrent impact that any State action has on natural or legal persons, culminating in pre-emptively dissuading them from exercising their rights.¹⁵⁵ The adoption of vague legal provisions,¹⁵⁶ their enforcement to restrict expression on issues of public interest and the adoption of sanctions,¹⁵⁷ regardless of their significance,¹⁵⁸ create a climate of self-censorship.¹⁵⁹ Given that Prof. Hunland is a public figure and a religious leader, the restriction will have an extensive adverse impact on the exercise of the freedom of expression of a larger audience.¹⁶⁰

¹⁵¹ Compromis, ¶24.

¹⁵² *Bodrožić v Serbia and Montenegro*, CCPR/C/85/D/1180/2003 (2005), ¶7.2.

¹⁵³ *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v. Togo*, CCPR/C/51/D/422/1990 (1996), ¶7.4.

¹⁵⁴ Compromis, ¶14.

¹⁵⁵ Laurent Pech, *The concept of chilling effect: its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*, Open Society European Policy Institute (2021), p. 4.

¹⁵⁶ *Orlovskaya Iskra v. Russia*, Judgment, 2017 ECtHR, ¶128.

¹⁵⁷ *Lombardo and Others v. Malta*, Judgment, 2007 ECtHR, ¶61.

¹⁵⁸ *Dupuis and Others v. France*, Judgment, 2007 ECtHR, ¶48.

¹⁵⁹ See *mutatis mutandis*, *Cumpănă et Mazăre c. Roumanie*, Judgment, 2004 ECtHR, ¶114.

¹⁶⁰ Compromis, ¶13.

B. Antara's suspension order was in violation of international human rights obligations owed to his followers

1. Ravaria has standing to make this claim before the Court

Ravaria has standing to bring this claim as obligations under the ICCPR are owed to Ravaria *erga omnes partes*.¹⁶¹

2. Antara owed international human rights law obligations to Prof. Hunland's followers

a) Antara has obligations towards the followers under its jurisdiction

Article 2(1) ICCPR imposes obligations on Antara with regards to Prof. Hunland's followers on Pano on its territory and subject to its jurisdiction.¹⁶² As the followers were in the Benthamian Peninsula and the content of his posts is mainly of interest to citizens of Sutha, it is reasonable to consider that a large percentage of them are within Antara's territory. Shall there be followers in Ravaria, this Court has acknowledged the extraterritorial scope human rights obligations.¹⁶³ The obligation to respect requires States to avoid interference, either directly or indirectly,¹⁶⁴ with the enjoyment of human rights, including outside their territory.¹⁶⁵ Given that Antara directly interfered with their enjoyment of their rights, it exercised power over the followers, triggering extraterritorial application of ICCPR.

b) Other followers also have the right to seek and receive information regardless of frontiers

The order prevents Prof. Hunland's followers from accessing information and is in direct conflict with the wording of article 19(2) ICCPR,¹⁶⁶ which secures the freedom to seek, receive and impart information "regardless of frontiers".¹⁶⁷

3. The suspension order violates the right to freedom of opinion and to seek and receive information of any kind of the followers

The right to freedom of opinion and expression is a fundamental right for the foundation of

¹⁶¹ ARISWA, Article 48(1); Sicilianos (2002), p. 1136.

¹⁶² ICCPR, Article 2(1).

¹⁶³ *Wall in the Occupied Palestinian Territory*, ¶¶109-112.

¹⁶⁴ U.N.Doc. E/C.12/GC/24, ¶29.

¹⁶⁵ HRC, General comment No. 36, CCPR/C/GC/36 (2018), ¶63.

¹⁶⁶ *Ahmet Yildirim v Turkey*, Judgment, 2012 ECtHR, ¶67.

¹⁶⁷ ICCPR, Article 19(2).

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democracy and development of the person,¹⁶⁸ and an “enabler” of other rights.¹⁶⁹ Antara failed to consider the significant collateral effect¹⁷⁰ towards over 9 million followers, as it also restrained their full enjoyment of other rights.¹⁷¹

4. The suspension order limits the right to freedom of thought and belief of Velan followers

The right to freedom of thought and belief¹⁷² includes the freedom to choose their religious leaders¹⁷³ and to communicate with communities regarding their belief.¹⁷⁴ By impeding Prof. Hunland, as a religious figure, to interact on Pano with his Velan followers, Antara unduly limited their right.

5. The suspension order limits the right the freedom of peaceful assembly and association of the followers

Although an assembly is usually regarded as a physical encounter, human rights protections apply to equivalent interactions online.¹⁷⁵ By removing Prof. Hunland’s page on Pano, Antara unduly eliminated a space for collective promotion of mutual interest,¹⁷⁶ which limits the ability of the followers to contribute to public debate, and therefore undermines their exercise of freedom of assembly and association.¹⁷⁷

¹⁶⁸ U.N.Doc. CCPR/C/GC/34, ¶2.

¹⁶⁹ U.N.Doc. A/HCR/17/27, ¶22.

¹⁷⁰ *Ahmet Yıldırım v. Turkey*, ¶66.

¹⁷¹ CCPR/C/GC/34, ¶4.

¹⁷² ICCPR, Article 18(1).

¹⁷³ HRC, General Comment No. 22, CCPR/C/21/Rev.1/Add.4 (1993), ¶1.

¹⁷⁴ Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, A/RES/36/55 (1981), Article 6(i).

¹⁷⁵ HRC, Rights to freedom of peaceful assembly and of association, A/HRC/41/41 (2019), ¶11; HRC Resolution A/HRC/RES/38/11 (2018).

¹⁷⁶ U.N.Doc. A/HRC/41/41.

¹⁷⁷ ICCPR, Article 21; U.N.Doc. A/HRC/41/41, ¶42.

C. Antara must rescind the suspension order

A State responsible for an internationally wrongful act must cease it¹⁷⁸ if its effects continue.¹⁷⁹ As the judicial branch of Antara¹⁸⁰ can engage its responsibility for internationally wrongful acts,¹⁸¹ Antara must cease such wrongful conduct¹⁸² and therefore rescind the order.¹⁸³

IV. ANTARA'S INTERFERENCE WITH COMPUTERS AND DEVICES OPERATING ON RAVARIAN SOIL, RESULTING FROM THE DECISION TO TAKE DOWN THE LUNAR BOTNET, WAS IN VIOLATION OF INTERNATIONAL LAW

A. Antara's interference with devices located in Ravaria's territory constitutes an internationally wrongful act

1. The interference is attributable to Antara as it was conducted by an organ of the State

Cyberactivity carried out by organs of a State,¹⁸⁴ such as the Data Protection and Cybersecurity Agency (DPCA)¹⁸⁵ are attributable to that State. The DCPA executed the "Operation Moonstroke", hacking the command-and-control (C&C) server hosting the Lunar Botnet,¹⁸⁶ and thus interfered with electronic devices in Ravaria.

2. The interference constituted a violation under the Budapest Convention

The Budapest Convention, to which Antara and Ravaria are parties, outlines guidelines for international cooperation, and the procedural framework required to adjust botnet-management solutions to international legal responsibilities.¹⁸⁷ As botnet mitigation falls within the scope of the Budapest Convention,¹⁸⁸ Antara violated its obligations on mutual assistance,¹⁸⁹ namely

¹⁷⁸ ARISWA, article 30(a).

¹⁷⁹ ARISWA, Article 30(a).

¹⁸⁰ Compromis, ¶26, 27.

¹⁸¹ U.N.Doc. CCPR/C/GC/34, ¶7.

¹⁸² ARISWA, Article 30(a).

¹⁸³ ARISWA, Article 30(a).

¹⁸⁴ ARSIWA, Article 4(1).

¹⁸⁵ Compromis, ¶12.

¹⁸⁶ Compromis, ¶32.

¹⁸⁷ James Grant Gerard, *Botnet Mitigation and International Law*, Columbia Journal of Transnational Law, Vol. 58, No.1 (2019), p. 227.

¹⁸⁸ Council of Europe, *T-CY Guidance Note #2: Provisions of the Budapest Convention covering botnets*, T-CY (2013) 6 E.

¹⁸⁹ Council of Europe Convention on Cybercrime (2001), ("Budapest Convention"), Article 25 *et seq.*

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an obligation to collaborate with State parties for “investigations or proceedings concerning criminal offences related to computer systems”,¹⁹⁰ by extraterritorially searching and seizing data that was not publicly available,¹⁹¹ without previous authorization of Ravaria¹⁹² nor legal and voluntary consent of the owners of the devices.¹⁹³

Article 25(3) encompasses the obligation to resort to mutual assistance even in urgent circumstances.¹⁹⁴ Additionally, this regime applies in instances of “loss of location”.¹⁹⁵ Such obligations are in line with the object and purpose of the convention as evidenced by the preamble,¹⁹⁶ which provides ample evidence that the Budapest Convention’s purpose is to *foster cooperation* between States. Therefore, the unilateral measures of Antara are not only implicitly excluded by the provisions of the treaty, but also hinder its utmost purpose.

3. The interference constituted an infringement of Ravaria’s sovereignty

a) The principle of sovereignty applies to Antara’s activities in cyberspace

Sovereignty is both a principle and a primary rule of international law, hence subject to violation.¹⁹⁷ Although sovereignty is fundamentally territorial,¹⁹⁸ it applies to a State’s cyberoperations,¹⁹⁹ as they occur on territory and involve tangible objects and individuals over which States have sovereign prerogatives.²⁰⁰ Ravaria enjoys sovereignty over the cyberinfrastructure located on its territory²⁰¹ (*i.e.*, electronic devices)²⁰² and activities associated with it.²⁰³

¹⁹⁰ Budapest Convention, Article 25(1).

¹⁹¹ Budapest Convention, Article 32(a).

¹⁹² Budapest Convention, Article 31(1).

¹⁹³ Budapest Convention, Article 32(b).

¹⁹⁴ Budapest Convention, Article 25(3).

¹⁹⁵ Council of Europe, *Cloud Computing and cybercrime investigations: Territoriality vs. the power of disposal?* (2010), p. 5.

¹⁹⁶ VCLT, Article 31 (2).

¹⁹⁷ Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, A/70/174 (2015), ¶27; Schmitt, *“Virtual disenfranchisement”: cyber election meddling in the grey zones of international law*, Chicago Journal of International Law, (2018), p. 40.

¹⁹⁸ *The Case of S.S. Lotus (France v Turkey)*, Judgment, 1927 PCIJ, (“*Lotus*”), p. 18.

¹⁹⁹ U.N.Doc. A/70/174 (2015), ¶27.

²⁰⁰ Tallinn 2.0., Rule 1.

²⁰¹ *Nicaragua*, ¶212; U.N.Doc. A/70/174, ¶28.

²⁰² Compromis, ¶32.

²⁰³ Tallinn 2.0, Rule 1.

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b) The interference constituted a violation of Ravaria's sovereignty

This Court previously stated that “the first and foremost restriction imposed by international law upon a State is that [...] it may not exercise its power in any form in the territory of another State”.²⁰⁴ Antara’s extraterritorial enforcement operation against the Lunar Botnet amounted to a violation of Ravaria’s sovereignty, lacking explicit allocation of authority under treaty and customary international law²⁰⁵ or *ad hoc* consent²⁰⁶ granted by Ravaria.

i. Even if the device's location was unknown when the operation was deployed, it still constituted a violation as it generated consequences that violate Ravaria's sovereignty

It is agreed upon that “intent is not a constitutive element of a breach of sovereignty”,²⁰⁷ and the standard for breach of this obligation is objective, therefore the advertence of the State is irrelevant.²⁰⁸ Antara’s cyberoperation thus violated Ravaria’s sovereignty, regardless of the foreseeability and intention²⁰⁹ to produce effects vis-à-vis the devices located in Ravaria or lack thereof, as it still interfered with them.

ii. By enforcing its domestic law in Ravaria's territory without Ravaria's consent, Antara usurped an inherently governmental function of Ravaria

This Court considered the exercise of extraterritorial authority²¹⁰ without consent²¹¹ a violation of territorial sovereignty. Sovereignty grants States independence to exclusively exercise the governmental functions²¹² in their territory.²¹³ State's cyberoperations that disrupt or usurp the inherent governmental powers of another State²¹⁴ breach such independence. Ravaria has

²⁰⁴ *Lotus*, p. 18; *Nicaragua*, ¶213.

²⁰⁵ *Lotus*, p. 18.

²⁰⁶ *Lotus*, p. 18.

²⁰⁷ Tallinn 2.0., Rule 4, ¶25.

²⁰⁸ ARSIWA, Article 2.

²⁰⁹ Tallinn 2.0, Rule 4.

²¹⁰ *Case concerning Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment, 2015 ICJ, ¶¶ 221-223.

²¹¹ *Corfu Channel*, ¶¶ 69-70.

²¹² In *Nicaragua* ¶205, the Court identified “the choice of a political, economic, social and cultural system, and the formulation of foreign policy” as exclusive matters of each State.

²¹³ *Island of Palmas*, p. 838.

²¹⁴ Tallinn 2.0, Rule 3.

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exclusive powers²¹⁵ regarding law enforcement measures and the administration of justice. Antara usurped inherently governmental functions exclusively reserved to Ravaria, thus violating its sovereignty.

Shall sovereignty be considered as exclusively protected by the principle of non-intervention, it would still be violated. These governmental functions are not only at the core of state authority,²¹⁶ hence its *domaine réservé*, but also constitute fundamental pillars sustaining democratic societies that cherish the rule of law. Any interference with a State's ability to perform such function qualifies as coercive.²¹⁷

iii. By accessing property in Ravaria's jurisdiction, albeit remotely, Anantara violated its sovereignty

Sovereignty principles apply to situations where a State exercises authority through a physical presence in the territory of another State²¹⁸ or remotely.²¹⁹ Antara's cross-border law enforcement measures to get unilateral access to property in Ravaria's soil,²²⁰ even remotely, constitute an infringement of Ravaria's sovereignty.

4. The interference breached Antara's international human rights obligations

a) Antara must respect the human rights of the owners of the devices

Article 2(1) of the ICCPR affirms that States must respect the rights of individuals "subject to [their] jurisdiction".²²¹ Jurisdiction may arise from cyberoperations²²² and can extend extraterritorially to individuals within the power or effective control of a State, even outside their territory.²²³ The most recent pronouncement of the HRC concerning this jurisdiction

²¹⁵ Tallinn 2.0, Rule 3.

²¹⁶ Moynihan, p. 15.

²¹⁷ Michael Schmitt, *Foreign Cyber Interference in Elections: An International Law Primer*, Part II, EJIL (2020).

²¹⁸ *Armed Activities on the Territory of the Congo case* (Democratic Republic of Congo v. Uganda), Judgment, 2005 I.C.J., ¶170, 173; *Wall in the Occupied Palestinian Territory case*, ¶178; HRC, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations, CCPR/C/79/Add.93 (1998).

²¹⁹ Moynihan, p. 17; Tilmann Altwicker, *Transnationalizing Rights: International Human Rights Law in Cross-Border Context*, The European Journal of International Law (2018), p. 583.

²²⁰ Jennifer Daskal, *Botnets and Bits*, Vanderbilt Law Review (2018), p. 229; Tallinn 2.0., Rule 4.

²²¹ ICCPR, Article 2(1).

²²² Tallinn 2.0., Rule 2.

²²³ CCPR/C/21/Rev.1/Add.13, ¶10.

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enlarges extraterritorial application to all persons over whose enjoyment of the rights the State exercises power or effective control.²²⁴ As technological advances allow for remote power and effective control, this standard is applicable to incorporeal infringement of human rights, *e.g.* to surveillance operations.²²⁵ Antara exercised its power over the owners of the devices and their capacity to enjoy their human rights.

Shall this Court require a spatial model of jurisdiction,²²⁶ Antara had effective power or control over the C&C server as it was in Antara's territory,²²⁷ from which it infected 30.000 devices, establishing a jurisdictional link due to the location of interference.²²⁸

In any event, Antara is bound by negative obligations to respect²²⁹ and hence refrain from interfering with human rights,²³⁰ which are territorially unlimited as Antara always remains in full control over the conduct of its organs.²³¹

b) The interference constituted a violation of the right to privacy

The ICCPR prohibits "arbitrary or unlawful interference"²³² with individuals' privacy and applies to Antara's conduct, as it includes, *inter alia*, protection of all data in electronic form.²³³ The right to privacy encompasses the capacity of individuals to control who has information about them.²³⁴ Antara's botnet detection method infringed upon the privacy of end-users as it surveilled behavioral patterns²³⁵ in bot activity, which is necessarily intermingled with their

²²⁴ U.N.Doc. CCPR/C/GC/36, ¶63.

²²⁵ HRC, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4 (2014), ¶22(a).

²²⁶ Marko Milanovic, *Human Rights Treaties and Foreign Surveillance*, Harvard International Law Journal, vol. 56: 1 (2015), p. 112; Ralph Wilde, *Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human Rights Treaties*, 40 Isr. L. Rev. 503 (2007).

²²⁷ Compromis, ¶32.

²²⁸ HRC, The right to privacy in the digital age, A/HRC/27/37 (2014), ¶34; Carly Nast, *Interference-Based Jurisdiction Over Violations of the Right to Privacy*, EJIL: Talk! (2013).

²²⁹ ICCPR, Article 2(1) *ab initio*; U.N.Doc. A/70/174, ¶28 (b).

²³⁰ U.N.Doc. A/HRC/39/29, ¶23; Milanovic, p. 119.

²³¹ Milanovic, p. 119.

²³² ICCPR, Article 17.

²³³ HRC, The right to privacy in the digital age, A/HRC/27/37 (2014); Balboni, Pelino, *Law Enforcement Agencies' activities in the cloud environment: a European legal perspective*, Information & Communications Technology Law (2013), p. 168.

²³⁴ HRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/23/40 (2013), ¶22.

²³⁵ Compromis, ¶32.

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private correspondence,²³⁶ and intercepted personal data (*i.e.* IP addresses).²³⁷ Antara's hacking allowed for the indiscriminate, remote, and secret access to personal devices and data stored on them. Lacking guarantees against abuse, this intrusive practice undermines or may "even destroy democracy under the cloak of defending it".²³⁸ Antara directly interfered²³⁹ with the privacy of Ravarian citizens, and thus violated Article 17 ICCPR, even without physical damage for the affected individuals.²⁴⁰

c) The interference violated the property rights of Ravarian citizens regarding their devices

Even though the right to property is not listed in the ICCPR, it constitutes an obligation arising from customary international law.²⁴¹ Antara violated the right to property of Ravarian citizens by unilaterally hacking electronic devices they owned, exposing them to grave risks of direct deleterious effects²⁴² that would deprive them from the peaceful enjoyment of their possessions.

B. The interference cannot be justified by grounds precluding unlawfulness

1. Antara cannot invoke necessity

A State may exceptionally²⁴³ invoke necessity as a circumstance precluding wrongfulness if it is the sole means of safeguarding an essential interest that faces a grave and imminent peril,²⁴⁴ including due to cyberoperations.²⁴⁵ Antara's violation under the Budapest Convention and infringement of Ravaria's sovereignty were not justifiable on the grounds of necessity, as it failed to satisfy these cumulative requirements. In any event, necessity cannot justify human rights violations, as the recognition of necessity-informed derogations in human rights

²³⁶ J.A. Berlo, *The Black Box Of Botnet Mitigation: Studying the Relationship between European Union Legislation and Botnet Mitigation Efforts*, Tilburg University (2019), p. 19.

²³⁷ Compromis, ¶32.

²³⁸ *Roman Zakharov v. Russia*, Judgment, 2015 ECtHR, ¶232.

²³⁹ Altwicker, p. 596.

²⁴⁰ Milanovic, p. 136; *Huvig v. France*, Judgment, 1990 ECtHR, ¶35.

²⁴¹ Universal Declaration of Human Rights (1948), Article 17; HRC, The Right of Everyone to Own Property Alone as well as in Association with Others, E/CN.4/1993/15 (1992), ¶37; John G. Sprankling, *The Global Right to Property*, Columbia Journal of Transnational Law (2014).

²⁴² Access Now, *A Human Rights Response to Government Hacking* (2016), p. 14.

²⁴³ *Case concerning the Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, 1997 ICJ, ("Gabcikovo-Nagymaros"), ¶¶51-52.

²⁴⁴ ARSIWA, Article 25.

²⁴⁵ *Gabcikovo-Nagymaros*, ¶¶51-52; ARSIWA, Article 25.

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instruments,²⁴⁶ *qua leges speciales*, excludes reliance on the necessity plea under the State responsibility framework in absence of such derogation.

a) *The Lunar Botnet does not constitute a grave and imminent peril to an essential interest of Antara*

The placement and operation of the Lunar Botnet do not meet the threshold of gravity required to invoke the plea of necessity.²⁴⁷ A cyberoperation may be regarded as a grave and imminent peril in instances where it severely interferes with an essential interest²⁴⁸ or critical infrastructure of a State, by destroying or rendering it dysfunctional.²⁴⁹ As the botnet's purpose was to share information and only affected privately owned cyberinfrastructure,²⁵⁰ which did not render the conduct of democratic elections dysfunctional, the repercussions to Antara's interests cannot be considered sufficiently grave to invoke necessity.

b) *Operation Moonstroke was not the only way available to Antara to safeguard its interest*

Necessity may not be invoked by Antara, as it had other means of safeguarding its interest,²⁵¹ including through international cooperation.²⁵² Before deploying the Operation Moonstroke, Antara's DPCA necessarily conducted a criminal investigation that identified the IP addresses of the infected devices and the patterns of the network, concluding a connection with the campaign before the Suthan referendum.²⁵³ As the referendum impacts the geopolitical dynamics of the Benthamian Peninsula as a whole, Antara could feasibly foresee that the botnet malware had reached Ravarian territory. Precisely because the DPCA was unaware of the location of the infected devices,²⁵⁴ Antara should have resorted to the mutual assistance regime on criminal investigations provided by the Budapest Convention for the purpose of digital forensics, acquiring all the while Ravaria's valid consent.²⁵⁵ Antara's plea of necessity is hence

²⁴⁶ ICCPR, Article 4.

²⁴⁷ ARSIWA, Article 25.

²⁴⁸ ARSIWA, Article 25.

²⁴⁹ Tallinn 2.0., Rule 36, ¶4.

²⁵⁰ Compromis, ¶31.

²⁵¹ ARSIWA, Article 25(1)(a).

²⁵² ARSIWA, Article 25(1)(a).

²⁵³ Compromis, ¶31.

²⁵⁴ Compromis, clarifications, ¶5.

²⁵⁵ ARSIWA, Article 20.

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inapplicable, as it had a feasible prospect of addressing the issue via international cooperation.²⁵⁶

c) Antara's interference seriously impaired essential interests of Ravaria and the international community as a whole

As respect of States' sovereign equality and the protection of human rights are cornerstones of international peace and security, Antara's interference not only impaired an essential interest of Ravaria, but also a collective interest of the international community as a whole.²⁵⁷

2. Antara cannot invoke self-defense

Antara's interference was not a valid exercise of the right to self-defense, as the botnet placement and the malicious malware infection cannot be attributed to Ravaria. Applicant's claim on Ravaria's alleged involvement with the Lunar Botnet rests only in circumstantial evidence, which does not meet a heightened burden of proof.²⁵⁸ A botmaster can infect devices and control this "zombie" network while masking its identity, making it impossible for Antara to provide a "clear and precise picture" of the events.²⁵⁹ Further, the placement of the Lunar botnet on the devices located in Antara and Ravaria did not rise to the level of cyberattacks, which could qualify as armed attack, as the scale and effects criteria²⁶⁰ are not met. Antara's conduct cannot be justified by its right of self-defense.²⁶¹

²⁵⁶ Tallinn 2.0., Rule 26, ¶21.

²⁵⁷ ARSIWA, Article 25(1)(b).

²⁵⁸ *Corfu Channel*, p. 18.

²⁵⁹ *Land and Maritime Boundary*, ¶232.

²⁶⁰ *Nicaragua*, ¶191.

²⁶¹ UN Charter, Article 51.

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PRAYER FOR RELIEF

For the foregoing reasons, the Velan Kingdom of Ravaria, the Respondent, respectfully requests this Honorable Court to adjudge and declare that:

- I. The documents obtained in the illegal search of the briefcase found in the vehicle driven by Ms. Walters and the 30 May 2021 recording are inadmissible as evidence in these proceedings;
- II. Ravaria's alleged financial contributions and cyber operations in connection with the Suthan referendum were consistent with international law;
- III. Antara's order suspending Prof. Hunland's Pano account was in violation of international law, and Antara must therefore rescind the order; and
- IV. Antara's interference with computers and devices operating on Ravarian soil, resulting from the decision to take down the Lunar Botnet, was in violation of international law.

Respectfully submitted,
AGENTS FOR RAVARIA

